

REMARKS

Upon entry of the forgoing amendments claims 31-35, 40-44, 67-69, 74-79 and 84 are pending in the application. Claims 1-30, 36-39, 45-66, 70-73 and 80-83 have been cancelled without prejudice or disclaimer to the subject matter contained therein. The amendments do not introduce any new subject matter within the meaning of 35 U.S.C. §132. Therefore, entry of the amendments is respectfully requested.

REJECTIONS UNDER 35 U.S.C. §103(a)

Jackson, et al. in view of Bombardelli, et al.

The Examiner has maintained the rejection of claims 67, 69 and 74-76 under 35 U.S.C. §103(a) as being obvious over Jackson, et al., U.S. Patent No. 5,578,641, and further in view of Bombardelli, et al., U.S. Patent No. 5,679,358.

Applicants traverse this rejection.

The teachings of Jackson et al. are directed to compositions containing ceramide pathway intermediates or precursors thereof. The compositions may further contain other active agents, such as anti-aging agents. With respect to ceramide pathway intermediates or precursors, Jackson et al. disclose phytosphingosine as a ceramide precursor. Furthermore, Jackson et al. disclose that the presence of ceramide precursors enables an increase of the levels of ceramides in the stratum corneum. See, Jackson et al., col. 2, lines 51-60. Thus, Jackson et al. disclose that phytosphingosine acts as a precursor of ceramide to obtain anti-aging activities linked to the level of ceramide in the skin.

Bombardelli et al., teaches compositions containing esculoside as an active agent. Esculoside is disclosed as improving blood micro-circulation. Further, it is taught that the compositions of Bombardelli et al. contain ingredients which improve early skin aging. See, col. 3, line 6. Applicants respectfully point out that while Bombardelli et al. purports to address skin aging generally, it in fact only directly addressing skin aging associated with blood micro-circulation and deficiencies therein. Applicants submit that there are numerous causes of skin aging beyond those related to deficiencies in blood micro-circulation.

Applicants respectfully submit Jackson et al. and Bombardelli et al. alone or in combination do not teach or suggest a composition comprising phytosphingosine as a slimming agent. The Examiner has incorrectly taken the position that compositions for cosmetic care formulated to produce a slimming effect are somehow included within anti-aging compositions. More importantly, the Examiner has not identified how anti-aging skin compositions generally would include compositions formulated for slimming of the body.

Furthermore, the Examiner has failed to address the specific causes of skin aging in the context of what each of the cited references teach and what is instantly claimed. On this basis the Examiner has too broadly construed the references as teaching compositions “useful for the same purpose.” One of skill in the art is well aware that there are numerous causes of skin aging and that each cause of aging requires a different treatment. While skin aging is a general category, each type of skin aging is unique – as is the treatment thereof. The teaching of the references themselves is evidence of this, since within the teaching of the references each addresses an entirely unique cause and treatment of skin aging. Specifically, Jackson et al. address ceramide pathways and Bomardelli et al. address micro-circulation. With this in mind, the Examiner has provided no basis for why one of skill in the art would have any reason to upon review of the teachings of the cited references and formulate a composition replacing an agent taught to improve ceramide content of the skin with an agent that is taught to improve micro-circulation in the skin or vice versa. On this basis the instant claims are unobvious over the cited art.

Accordingly, the Examiner is asked to reconsider and withdraw this rejection to claims 67, 69 and 74-76.

Jackson, et al. in view of Bombardelli, et al. further in view of Streekstra et al.

The Examiner has also maintained the rejection of claim 68 under 35 U.S.C. §103(a) as being obvious over Jackson, et al., above, in view of Bombardelli, et al., above, and further in view of Streekstra, et al., WO 00/53568.

Applicants traverse this rejection.

Jackson et al. and Bombardelli et al. are discussed above. Streekstra et al., has been discussed in previous responses.

Applicants respectfully that Streekstra et al., like Jackson et al and Bomardelli et al., do not teach the efficiency of phytosphingosine as a slimming agent. Likewise, a composition comprising the combination of lipolytic agents and phytosphingosine is not taught. Again the Examiner has over-generalized the teachings in the area of the anti-aging arts. Since it could not be predicted in view of the cited references that the claimed compositions would have a slimming effect, there is no reason for one of skill in the art to combine the cited references to arrive at the claimed subject matter.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Jackson, et al. in view of Bombardelli, et al. further in view of Andre et al.

The Examiner has maintained the rejection of claim 77 under 35 U.S.C. §103(a) as being obvious over Jackson, et al., above, in view of Bombardelli, et al., above, and further in view of Andre et al., U.S. Patent No. 5,709,864.

Applicants traverse this rejection.

Jackson et al. and Bombardelli et al. are discussed above. Andre et al., has been discussed in previous responses.

Applicants respectfully that Andre et al., like Jackson et al and Bombardelli et al., do not teach a composition wherein phytosphingosine is a slimming agent. Likewise, the combination of lipolytic agents and phytosphingosine is not taught. Again the Examiner has over-generalized the teachings in the area of the anti-aging arts. Since it could not be predicted in view of the cited references that the claimed compositions would have a slimming effect, there is no reason for one of skill in the art to combine the cited references to arrive at the claimed subject matter.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Jackson, et al. in view of Andre et al.

The Examiner has maintained the rejection of claims 67, 69, 74 and 78-79 under 35 U.S.C. §103(a) as being obvious over Jackson, et al., above, in view of Andre et al., above.

Jackson et al. is discussed above. Andre et al., has been discussed in previous responses and above.

Again, Applicants respectfully that Andre et al., like Jackson et al., does not teach compositions wherein phytosphingosine is a slimming agent. Likewise, the combination of lipolytic agents and phytosphingosine is not taught. Again the Examiner has over-generalized the teachings in the area of the anti-aging arts. Since it could not be predicted in view of the cited references that the claimed compositions would have a slimming effect, there is no reason for one of skill in the art to combine the cited references to arrive at the claimed subject matter.

Accordingly, the Examiner is asked to reconsider and withdraw this rejection.

Bombardelli, et al. in view of Jackson, et al.

The Examiner has maintained the rejection of claims 31-32, 34-35 40-42 and 84, under 35 U.S.C. §103(a) as being obvious over Bombardelli, et al., above, in view of Jackson, et al., above.

Applicants traverse this rejection.

Bombardelli et al., teaches compositions containing esculoside as an active agent. Esculoside is disclosed as improving blood micro-circulation. Further, it is taught that the compositions of Bombardelli et al. contain ingredients which improve early skin aging. See, col. 3, line 6. Applicants respectfully point out that while Bombardelli et al. purports to address skin aging generally, it in fact upon close inspection only directly addressing skin aging associated with blood micro-circulation and deficiencies therein. Applicants submit that there are numerous causes of skin aging beyond those related to deficiencies in blood micro-circulation.

The teachings of Jackson et al. are directed to compositions containing ceramide pathway intermediates or precursors thereof. The compositions may further contain other active agents, such as anti-aging agents. With respect to ceramide pathway intermediates or precursors, Jackson et al. disclose phytosphingosine as a ceramide precursor. Furthermore, Jackson et al. disclose that the presence of ceramide precursors enables an increase of the levels of ceramides in the stratum corneum. See, Jackson et al., col. 2, lines 51-60. Thus, Jackson et al. disclose that phytosphingosine acts as a precursor of ceramide to obtain anti-aging activities linked to the level of ceramide in the skin.

Applicants respectfully submit Bombardelli et al. and Jackson et al. alone or in combination do not teach or suggest the use of phytosphingosine as a slimming agent. The Examiner has incorrectly taken the position that cosmetic care to produce a slimming effect is somehow included within anti-aging or that all modes of skin aging are similarly treatable. In either case, the Examiner has not identified how anti-aging skin treatments generally would include methods of slimming of the body.

Furthermore, the Examiner has failed to address the specific causes of skin aging in the context of what each of the cited references teach and what is instantly claimed. On this basis the Examiner has too broadly construed the references as teaching compositions “useful for the same purpose.” One of skill in the art is well aware that there are numerous causes of skin aging and that each cause of aging requires a different treatment. While skin aging is a general category, each type of skin aging is unique. The teaching of the references themselves is evidence of this, since within the teaching of the references each addresses an entirely unique cause of skin aging. Specifically, Bomardelli et al. address micro-circulation and Jackson et al. address ceramide pathways. With this in mind, the Examiner has provided no basis for why one of skill in the art would have any reason to replace an agent taught to improve micro-circulation with an agent taught to improve ceramide content of the skin or vice versa. On this basis the instant claims are unobvious over the cited art.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Bombardelli, et al. in view of Jackson, et al. further in view of Streekstra et al.

The Examiner has maintained the rejection of claim 33 under 35 U.S.C. §103(a) as being obvious over Jackson, et al., above, in view of Bombardelli, et al., above, and further in view of Streekstra, et al., above.

Applicants traverse this rejection.

Bombardelli et al., teaches compositions containing esculoside as an active agent. Esculoside is disclosed as improving blood micro-circulation. Further, it is taught that the compositions of Bombardelli et al. contain ingredients which improve early skin aging. See, col. 3, line 6. Applicants respectfully point out that while Bombardelli et al. purports to address skin aging generally, it in fact only directly addressing skin aging associated with blood micro-circulation and deficiencies therein. Applicants submit that there are numerous causes of skin aging beyond those related to deficiencies in blood micro-circulation.

The teachings of Jackson et al. are directed to compositions containing ceramide pathway intermediates or precursors thereof. The compositions may further contain other active agents, such as anti-aging agents. With respect to ceramide pathway intermediates or precursors, Jackson et al. disclose phytosphingosine as a ceramide precursor. Furthermore, Jackson et al. disclose that the presence of ceramide precursors enables an increase of the levels of ceramides in the stratum corneum. See, Jackson et al., col. 2, lines 51-60. Thus, Jackson et al. disclose that phytosphingosine acts as a precursor of ceramide to obtain anti-aging activities linked to the level of ceramide in the

skin.

As previously submitted, Streekstra, et al. teach topical application of salts of sphingoid base derivatives in the treatment of conditions associated with dry skin, inflammation and/or microbial activity, i.e., eczema, psoriasis, atopic dermatitis, acne, dandruff, mouth and/or lip infections, mycoses, various other skin infectious diseases or vaginal infections, as well as, wounds, burns, and overall normalization of skin flora. As with Jackson et al. and Bombardelli, Streekstra, et al. do not teach or suggest the use of phytosphingosine as a slimming agent.

Applicants respectfully submit Bombardelli et al., Jackson et al. and Streekstra et al. alone or in combination do not teach or suggest the use of phytosphingosine as a slimming agent. The Examiner has incorrectly taken the position that cosmetic care to produce a slimming effect is somehow included within anti-aging. More importantly, the Examiner has not identified how anti-aging methods of treating skin generally would include methods of slimming of the body.

Furthermore, the Examiner has failed to address the specific causes of skin aging in the context of what each of the cited references teach and what is instantly claimed. On this basis the Examiner has too broadly construed the references as teaching compositions “useful for the same purpose.” One of skill in the art is well aware that there are numerous causes of skin aging and that each cause of aging requires a different treatment. While skin aging is a general category, each type of skin aging is unique. The teaching of the references themselves is evidence of this, since within the teaching of the references each addresses an entirely unique cause of skin aging and unique treatments therefor. Specifically, Bombardelli et al. address micro-circulation and Jackson et al. address ceramide pathways. With this in mind, the Examiner has provided no basis for why one of skill in the art would have any reason to replace an agent taught to improve micro-circulation with an agent taught to improve ceramide content of the skin or vice versa. Thus, none of the cited references, alone or together, teach or suggest or otherwise render obvious the use of

phytosphingosine as a slimming agent.

Incorporation of the teachings of Streekstra et al. into the rejection does not remedy this deficiency. On this basis the instant claims are unobvious over the cited art.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Bombardelli, et al. in view of Jackson, et al. further in view of Andre et al.

The Examiner has maintained this rejection claims 43-44 under 35 U.S.C. §103(a) as being obvious over Bombardelli, et al., in view of Jackson, et al., above, and further in view of Andre et al., all above.

Applicants traverse this rejection.

Applicants respectfully submit Bombardelli et al., Jackson et al. and Andre et al. alone or in combination do not teach or suggest the use of phytosphingosine as a slimming agent. The Examiner has incorrectly taken the position that cosmetic care to produce a slimming effect is somehow included within anti-aging. More importantly, the Examiner has not identified how anti-aging methods of treating skin generally would include methods of slimming of the body.

Furthermore, the Examiner has failed to address the specific causes of skin aging in the context of what each of the cited references teach and what is instantly claimed. On this basis the Examiner has too broadly construed the references as teaching compositions “useful for the same purpose.” One of skill in the art is well aware that there are numerous causes of skin aging and that each cause of aging requires a different treatment. While skin aging is a general category, each type

of skin aging is unique. The teaching of the references themselves is evidence of this, since within the teaching of the references each addresses an entirely unique cause of skin aging and unique treatments therefor. Specifically, Bomardelli et al. address micro-circulation and Jackson et al. address ceramide pathways. With this in mind, the Examiner has provided no basis for why one of skill in the art would have any reason to replace an agent taught to improve micro-circulation with an agent taught to improve ceramide content of the skin or vice versa. Thus, none of the cited references, alone or together, teach or suggest or otherwise render obvious the use of phytosphingosine as a slimming agent.

Incorporation of the teachings of Andre et al. into the rejection does not remedy this deficiency.

As previously submitted, Andre, et al. teach a cosmetic or pharmaceutical dermatological composition comprising an effective quantity of a plant extract of the genus *Tephrosia*, i.e., *T. purpurea*, which are used for anti-aging applications. As such Andre et al. do not remedy the deficiencies of the primary references. On this basis the instant claims are unobvious over the cited art.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection.

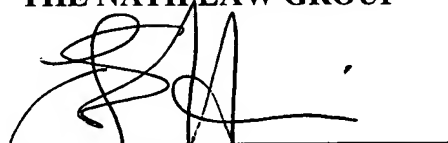
CONCLUSION

In view of the foregoing, Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections, and to allow all of the claims pending in this application.

If the Examiner has any questions or comments regarding this matter, he is welcomed to contact the undersigned attorney at the below-listed number and address.

Respectfully submitted,

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